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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5

In Re:) Chapter 13
)
JESUS GUTIERREZ GALINDO) Bankruptcy No. 08-53439
AND ALICIA GALINDO,)
)
Debtors.)

JESUS GUTIERREZ GALINDO) Adversary No. 10-05112
AND ALICIA GALINDO,)
)
Plaintiffs,)

vs.)

MORTGAGEIT, INC., WASHINGTON)
MUTUAL BANK, J.P. MORGAN)
CHASE BANK, MORTGAGE)
ELECTRONIC REGISTRATION)
SYSTEMS, INC., HILLTOP)
FINANCIAL MORTGAGE, INC.,)
GLORIA GARDINER AND)
THANH NGUYEN,)

Defendants.)

Date: August 12, 2010
Time: 10:30 a.m
Place: 3099

HON. ROGER L. EFREMSKY

**PLAINTIFFS' OPPOSITION TO MOTION TO STRIKE PORTIONS OF
COMPLAINT**

Plaintiffs respond to MortgageIT's motion to strike portions of the prayer as

1 follows:

2 Plaintiffs concede that they are not entitled to statutory damages under TILA
3 against any defendant. The motion, paragraph 2, is well taken with respect to the TILA
4 statutory damages.

5 Movant's request to strike a request for punitive damages with respect to punitive
6 damages is ill taken. The complaint alleges that the individuals with whom the Plaintiffs
7 interfaced were agents of Movant, the original lender. Movant has liability for the actions
8 of its agents with respect to this transaction. Plaintiffs have plead the acts and statements
9 which were false, fraudulent and designed to induce Plaintiffs into a transaction that did
10 not benefit them and which they would not have entered into but for the false statements.
11 Punitive damages are recoverable in instances of fraud. Cal. Civ. C. 3294.

12 At this stage of the proceedings, the allegations of the complaint must be accepted
13 as true and construed in the light most favorable to the plaintiff. The prayer for punitive
14 damages is appropriate when the factual predicates as pled are assumed true.

15 The balance of the prayer is neither "redundant, immaterial, impertinent or
16 scandalous." The motion should be denied except with respect to statutory damages under
17 TILA.

18 MORAN LAW GROUP

19
20 Date: 07/28/2010

/s/ Cathleen Cooper Moran
CATHLEEN COOPER MORAN